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No. 207

IN THE

Supreme Court of the United States

October Term, 1954

HARRY ALEXANDER, INC., CONTINENTAL CASUALTY CO.,
Petitioners,

v.

ALICE P. FRIEND, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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CONTINENTAL CASUALTY CO.

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled case on March 10, 1955.

OPINIONS BELOW

The opinion of the District Court is unreported. The opinion of the Circuit Court of Appeals (App. 1a) is reported in U.S. App. D.C. , 220 F. 2d 820.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 10, 1955. A petition for rehearing by the Circuit Court of Appeals in banc was denied on April 5, 1955. (App. 9a). The jurisdiction of this Court is invoked under 28 U.S.C.A. 1254(1).

QUESTIONS PRESENTED

Whether the Circuit Court of Appeals may disregard the reasoning and inferences of an administrative tribunal and substitute its own views therefor, when the conclusions of the administrative tribunal are supported by substantial evidence.

Does the Longshoremen's and Harbor Workers' Compensation Act of March 24, 1927, 44 Stat. 1424, 33 U.S.C.A. 901 et. seq., require the courts to resolve all factual doubts in favor of the employee or his dependent family.

STATUTE INVOLVED

The Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1424, 33 U.S.C.A. 901 et seq., as made applicable to the District of Columbia by the Act of May 17, 1928, 45 Stat. 600, D.C. Code 36-501.

STATEMENT

This case arises upon a complaint for judicial review of a compensation order filed on July 22, 1953 by Theodore Britton, Deputy Commissioner, Bureau of Employees' Compensation, United States Department of Labor, in which order defendant below, Britton, rejected the claim for compensation of plaintiff below, Alice P. Friend, widow of one Herbert W.

Friend, hereinafter called the "deceased." The said order was issued pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1424, 33 U.S.C.A. 901 et seq., as made applicable to the District of Columbia by the Act of May 17, 1928, 45 Stat. 600, D.C. Code 36-501.

On February 14, 1950 the deceased allegedly sustained an aggravation of a pre-existing aneurysm while at work and was awarded compensation for total disability which continued until his death on January 17, 1952 from a rupture of said aneurysm. (An aneurysm is the dilatation of the walls of an artery generally due to disease.) His widow then filed claim for death benefits contending that the death resulted from the injury. The question which the deputy commissioner had to decide upon the hearing of the claim was whether the aggravation of the pre-existing aneurysm hastened the death. The deputy commissioner found that it did not and rejected the claim.

THE COMPENSATION ORDER

The deputy commissioner in the compensation order found the facts to be in part as follows:

> "That the employee (Herbert W. Friend) continued to be totally disabled as a result of the injury of February 14, 1950 (for which compensation was awarded to the injured employee by the Deputy Commissioner in a compensation order filed on March 15, 1951), until the time of his death; * * * that the employee died on January 17, 1952, as a result of hemorrhage and shock due to rupture of an aneurysm of the abdominal aorta; * * * that the employee had suffered from an aneurysm of his abdominal aorta for several years

before the injury of February 14, 1950; that the said aneurysm weakened the wall of the employee's abdominal aorta; that such condition naturally and progressively deteriorated from the time of its inception to the time of the employee's death, and such deterioration culminated in and was the cause of rupture of the wall of the aorta resulting in his death; that the injury did not hasten the natural and unavoidable progression of the deterioration of the said condition, but on the contrary the enforced cessation of work and curtailment of all physical activities by the employee during his disablement had a beneficial effect in that the hazard of earlier fatal rupture of the said diseased abdominal aorta was reduced; that the employee's death was not due to the injury of February 14, 1950, nor was it hastened thereby, but that his death was due to the natural and unavoidable progression of the said pre-existing aneurysm of his abdominal aorta."

The widow then brought a proceeding in the United States District Court for the District of Columbia to set aside said order pursuant to Section 21 (b) of the Compensation Law, 33 U.S.C.A., Sec. 921 (b). The District Court sustained the order. An appeal was then taken to the United States Court of Appeals for the District of Columbia Circuit.

The Court below reversed the order of the District Court upon the authority of *O'Leary* v. *Brown-Pacific-Maxon*, 340 U.S. 504, 71 S. Ct. 470, read in light of *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 71 S. Ct. 456, providing the reviewing court with the power to review the record as a whole to determine whether the administrative findings are supported by substantial evidence and not merely by some isolated evidence. In reviewing the

record as a whole the court recognized that the Act is to be construed with a view to its beneficient purposes and that all doubts, including the factual, are to be resolved in favor of the employee or his dependent family. Cf. *Fidelity & Casualty Co. of N. Y.* v. *Burris,* 61 App. D.C. 228, 230, 59 F. 2d 1042, 1044; *Robinson* v. *Bradshaw,* 92 U.S. App. D.C. 216, 206 F. 2d 435, cert. denied 346 U.S. 899 (App. 2a).

The Court below after reviewing the record as a whole decided that the conclusions of the Deputy Commissioner were not supported by substantial evidence. Two judges were of the opinion that the record as a whole could support only a conclusion contrary to the findings of the Deputy Commissioner and the case was remanded for entry of an award in accordance with the opinion. The other judge, although agreeing that the record did not support the Deputy Commissioner's findings, stated that he did not believe the record supported the opposite conclusion as a matter of law and suggested a remand of the case to the Deputy Commissioner for new findings (App. 7a, 8a).

REASONS FOR GRANTING THE WRIT

1. The scope of judicial review in cases involving administrative findings has been clearly enunciated by this Court, in *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 71 S. Ct. 456, and *O'Leary, Dep. Comm.* v. *Brown-Pacific-Maxon, Inc.,* 340 U.S. 504, 71 S. Ct. 470. The Court below recognized the rule laid down in the foregoing cases, but failed to adhere to it.

That standard of judicial review requires the reviewing court to accept the findings of fact of the administrative tribunal unless they are unsupported by

substantial evidence on the record considered as a whole. Stated negatively, the findings will not be affirmed if based only on isolated pieces of evidence.

The respondent did not offer any testimony concerning the cause of the employee's death, at the administrative hearing. The petitioners offered the testimony of several medical experts to the effect that the employee's death was unrelated to the prior compensable injury, and further that the prior injury may have had the beneficial effect of prolonging the employee's life. This testimony was undisputed and without conflict. The Deputy Commissioner at the request of the respondent, incorporated into the record the administrative proceedings incidental to the prior injury and made his finding of no causal relation between injury and death from the whole record. It should be noted however, that the administrative proceedings incidental to the prior injury contained no evidence concerning the effect of the injury upon the employee's life span.

The Court below, on the basis of the foregoing record and applying the rules of judicial review set down in the *Universal Camera Case, supra,* and *O'Leary* v. *Brown-Pacific-Maxon, supra,* rejected the findings of the Deputy Commissioner and found as a matter of law that the record could only support an opposite conclusion. It is patent that the court's action constituted a departure from the scope of judicial review. The uncontradicted testimony concerning the causal relationship between injury and death, indeed the *only* testimony on that point—was given by the several medical experts. That testimony was wholly consistent with the Deputy Commissioners findings. If the consistent expert testimony was not substantial

evidence upon which to base the findings of the Deputy Commissioner, certainly there was no other and more substantial testimony which would justify the court below in making an opposite finding as a matter of law.

2. The decision of the court below is in conflict with the decisions of this Court in *Del Vecchio et al.* v. *Bowers,* 296 U.S. 280, 56 S. Ct. 190, and *Cardillo, Dep. Comm.* v. *Liberty Mutual Insurance Company et al.,* 330 U.S. 469, 67 S. Ct. 801. The conflict results from the court's rejection of the inferences and reasoning of the Deputy Commissioner and a substitution of its own.

The court below did not dispose of this case by resolving a question of law. Instead, the court undertook the task of sifting the facts, weighing the evidence and drawing inferences from the testimony. This clearly was an invasion of the province of the Deputy Commissioner whose inferences and reasoning, if otherwise sustainable, may not be disturbed by the reviewing court. It is immaterial whether the basic facts from which the Deputy Commissioner draws his inference are undisputed, or that the facts permit the drawing of the diverse inferences. *Cardillo, Dep. Comm.* v. *Liberty Mutual Insurance Co., supra.*

The foregoing error has been compounded by the complete rejection of the Deputy Commissioner's findings by the court below, and a substitution of its findings. This is an usurpation by the court of the duties of the Deputy Commissioner, for which there is no authority in either statute or judicial decision.

3. The decision of the court below is directly in conflict with a decision of the Fifth Circuit Court of Ap-

peals in *Darnell Riley et al.* v. *Joseph H. Henderson, Dep. Comm. et al.*, 218 F. 2d 752, on the point of resolving factual doubts.

The court below stated in its opinion, that,

> "Doubts, including the factual, are to be resolved in favor of the employee or his dependent family." *Fidelity & Casualty Co. of N. Y.* v. *Burris*, 61 App. D.C., 228, 230, 59 F. 2d 1042, 1044, *Robinson* v. *Bradshaw*, 92 U.S. App. D.C. 216, 206 F. 2d 435, cert. denied 346 U.S. 399, and cases there cited."

The Fifth Circuit Court of Appeals in *Riley et al.* v. *Henderson, et al., supra,* commenting upon the case of *Fidelity & Casualty Company of N. Y.* v. *Burris, et al., supra,* stated,

> "The court also said that where there is doubt, it should be resolved in favor of the claimant, but this language necessarily related to doubt as to the construction of the statute, not as to the facts."

It is readily seen that the two Circuit Courts of Appeals are in disagreement on this subject. If *Riley et al.* v. *Henderson, et al., supra,* contains the correct statement of the law then the conclusion of the court below must be reversed since its premise is defective per se.

4. Clearly, the questions presented are of importance in the administration of the Longshoremen's and Harbor Workers' Compensation Act, supra. The opinion of the court below is not just a statement of the highest appellate court for the District of Columbia on a local matter, but is an enunciation of the law on an important federal statute, under which

there is a constant flow of claims and litigation in every federal judicial circuit in the United States.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Date: